In the High Court of Judicature at Madras

Dated : 06.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.12041 to 12045 of 2018
& WMP.Nos.14048 to 14057 of 2018

M/s.Sangam Warper & Sizer (P) Ltd.,
rep.by its Director - Arpit Jain ...Petitioner

Vs

The Assistant Commissioner (ST),
Tiruchengode (Rural), Tiruchengode,
Namakkal District. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondent in his impugned proceedings made respectively in TIN No. 33383203550/2010-11, TIN No.33383203550/2011-12, TIN No. 33383203550/2012-13, TIN No.33383203550/2013-14 and TIN No. 33383203550/2014-15, all dated 28.3.2018, quash the same as illegal and contrary to the scheme of the Act and further direct the respondent to dispose of the petitions filed by the petitioner under Section 84 of the TNVAT Act, 2006 dated 02.5.2018 as expeditiously as possible and in accordance with law.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and is a manufacturer of cotton gray fabric, printed cotton fabric, textile fabric and apparel fabric at Tiruchengode. The petitioner is aggrieved by the revision of assessment made by the respondent for the years 2010-11 to 2014-15. The revision of assessment was based on an inspection of the

place of business of the petitioner by the officials of the Enforcement Wing on 12.5.2015.

3. Admittedly, the petitioner did not file their objections to the revision notices dated 07.6.2016 nor appeared for the personal hearing. Thereafter, the petitioner was again directed to file their objections vide notices dated 30.8.2016 and 06.1.2017. Even thereafter, the petitioner had not filed objections nor availed the opportunity of personal hearing. The respondent once again gave one more opportunity to the petitioner by issuing another notice dated 19.2.2018, for which also, the petitioner did not respond. Therefore, the respondent cannot be faulted in confirming the proposal in the said notices.

4. However, one factor, which has to be noted, is that the revision of assessment was based on the details gathered by the Inspecting Officials of the Enforcement Wing when compared with Annexure II of the sellers. In such circumstances, this Court, in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343], laid down certain guidelines as to how the Assessing Officers have to proceed with the assessment when the revision of assessment is based on mismatch of the details between the returns filed by the dealers and what are reflected in Annexure II of the sellers. This direction was necessitated on account of the fact that the Commercial Taxes Department has not issued any guidelines to the Assessing Officers as to how to deal with the assessments when the revision of assessment is made by gathering details from Annexure II of the sellers.

5. However, had the petitioner filed their objections, the respondent would have considered and passed orders. Hence, the present circumstance, to which, the petitioner has been pushed, is solely attributable to the petitioner themselves. But, considering the fact that appropriate rate of tax has to be collected and that the assessment orders should not be paper orders, this Court is inclined to grant one opportunity to the petitioner to go before the Assessing Officer.

6. Accordingly, the writ petitions are disposed of with a direction to the petitioner to pay 15% of the disputed tax for each of the assessment years within three weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition, they will be entitled to treat the impugned orders as show cause notices and submit their objections within a period of seven days therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessments in accordance with law. It is needless to add that the benefit of this order will not enure to the petitioner, if the petitioner fails to comply with the condition of payment of 15% of the disputed tax for each of the assessment years within the time stipulated. On the other hand, if the petitioner complies with the said condition, the demand of the balance tax and penalty, if any, for the assessment years from 2010-11 to 2014-15 shall remain stayed

till fresh orders are passed by the respondent. No costs. Consequently, the connected above WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (ST), Tiruchengode (Rural),
Tiruchengode,
Namakkal District.

+5cc to Mrs.R.Hemalatha, Advocate sr.no.35162
+1cc to Special Government Pleader(Taxes) in sr.no.35537

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nr 13/06/2018